California Council for Environmental and Economic Balance
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March 14, 2019

Mr. Rizgar Ghazi
Acting Deputy Director
Hazardous Waste Management Program
Department of Toxic Substances Control
1001 I Street
Sacramento, CA 95814

Re: DTSC Conceptual Framework for SB 673 Track II

Dear Mr. Ghazi:

On behalf of the members of the California Council for Environmental and Economic Balance (CCEEB), we appreciate the opportunity to offer the following comments regarding the Department of Toxic Substances Control's (DTSC) SB 673 Track II Cumulative Impacts and Community Vulnerability framework. Additionally, we greatly appreciate the time staff has taken to discuss the proposed framework in greater detail with CCEEB and the establishment of a Business Working Group to discuss and vet the details of the proposal.

CCEEB is a coalition of business, labor, and public leaders that works together to advance strategies to achieve a sound economy and a healthy environment. Founded in 1973, CCEEB is a non-profit and non-partisan organization. Many CCEEB members own and operate hazardous waste management facilities in California that will be subject to DTSC's proposed framework. Additionally, many more CCEEB members are generators of hazardous waste that need viable options for proper handling and disposal. In reviewing the proposed framework, CCEEB has identified a number of issues that we wish to raise for further consideration, as detailed below.

Key Points

- **The Framework appears to go beyond DTSC authority to regulate hazardous waste facilities.** DTSC should focus on environmental exposures and mitigations over which it has direct authority, recognizing that other outside impacts, including issues related to land use, are overseen and mitigated through other agencies and jurisdictions.

- **SB 673 requires DTSC to improve transparency and consistency in decisions.** The framework, however, appears to do the opposite by proposing

varying or unstated acceptability criteria without explanation of how this new information would be used or considered.

- **Tiering should be based on review of a facility's potential impacts.** This should include consideration of baseline conditions and actions and mitigations overseen by other responsible agencies beyond DTSC, such as federal Risk Management Plans approved by the federal EPA and compliance with local air district rules. Supplemental information about community conditions should follow the facility review. It is critical that community stakeholders have a clear understanding of the actual risk from a facility before attempting to judge which tier may be appropriate. As part of this, DTSC has an obligation to inform the public of additional programs in place at other agencies so that the public may be aware of the full extent of environmental, public health, and safety measures in place to protect communities.

- **The science is uncertain; DTSC must engage stakeholders and experts to validate the framework.** The association between facility siting and community conditions and public health outcomes—such as cardiovascular disease, unemployment, and linguistic isolation – is not well understood. Yet DTSC seeks to establish a causal link, at least to the extent that it could require a facility to "improve conditions" and provide investments in order to reduce community vulnerability. Given the scientific uncertainty, public review of DTSC technical assumptions is warranted, separate from policy discussions around how the framework is implemented.

Detailed Comments on the Framework

The framework for "Track II" is meant to implement SB 673 (Lara, 2016), which requires DTSC to "consider for inclusion as criteria" in permit decisions "[t]he vulnerability of, and existing health risks to, nearby populations. Vulnerability and existing health risks shall be assessed using available tools, local and regional health risk assessments, the region's federal Clean Air Act attainment status, and other indicators of community vulnerability, cumulative impact, and potential risks to health and well-being," among several other factors. [H&SC §25200.21(b)]

However, this new requirement to "consider" community factors does not supplant or supersede the hazardous waste planning processes at the county and statewide levels, nor does it grant DTSC any new or enhanced authority to regulate impacts in a community outside of those directly related to the permitted facility and its operations.

The role of local and state hazardous waste plans is of importance here, as are legislative findings regarding the need to manage and properly dispose of hazardous waste and to retain hazardous waste disposal facilities. Indeed, this has been a critical and growing problem for a number of year. See, for example:[1]

[1] See also H&SC §§ 25146 and 25135.9(a).

> "Safe and responsible management of hazardous wastes is one of the most important environmental problems facing the state at the present time. It is critical to the protection of the public health and the environment, and to the economic growth of the state." [*H&SC 25135(a)(5)]*
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> *"*It is the intent of the Legislature that the hazardous waste management plans prepared pursuant to this article serve as the primary planning document for hazardous waste management at the local level; that the plans be integrated with other local land use planning activities to ensure that suitable locations are available for needed hazardous waste facilities; that land uses adjacent to, or near, hazardous waste facilities, or proposed sites for these facilities, are compatible with their operation; and that the plans are prepared with the full and meaningful involvement of the public, environmental groups, civic associations, generators of hazardous wastes, and the hazardous waste management industry." *[H&SC §25135(c)]*
>
> *"*The Legislature further finds and declares that:
> (a) It is a matter of urgent public necessity and statewide concern that the number of existing hazardous waste facilities be retained to the extent feasible.
> *"H&SC § 25146.5]*

These sections make clear the Legislature's goal of safe management and disposal of hazardous waste in California, as well as its directive to local government authorities to balance land use priorities with hazardous waste management. So important was hazardous waste disposal capacity to the Legislature, it went so far as to specify that a local government could only prohibit or "unreasonably regulate" an existing facility in instances where the director could make a public determination that the facility could present an "imminent and substantial endangerment to health and the environment." *[H&SC § 25149]*

CCEEB is concerned that the SB 673 Track II framework could, if not designed well and based on technically and scientifically sound permit evaluations, inadvertently cause TSDFs to close, whether due to excessive administrative burden or through permit denials. This in turn would run counter to state goals to treat and manage hazardous materials. The remainder of these comments focus on ways that DSTC could improve the framework to meet the requirements of SB 673, as well as other requirements in state code.

SB 673 Is Meant to Improve Transparency and Consistency in Permit Decisions

The bill added Section 25200.23 to the Health and Safety Code, which, among other things, directs DTSC to "Establish transparent standards and procedures for permitting decisions," and to "Employ consistent procedures for reviewing permit applications, integrating public input into those procedures, and making timely permit decisions."

CCEEB is concerned that the assessment procedure outlined in the framework involves varying or unstated acceptability criteria, and offers a variety of tools that may be used in permit evaluations without defining exactly how DTSC would consider different data or factors, or how DTSC would consider all data presented collectively. This ambiguity gives DTSC significant discretion and seems largely subjective in nature, in that it could lead to different permitting conclusions depending on the evaluator. This also seems at odds with the bill's stated objectives of transparency and consistency.

Working Group Can SupportTechnical and Scientific Basis for Framework

CCEEB appreciates the steps taken by DTSC to convene a technical working group that can review and discuss the scientific basis for the framework. CCEEB suggests that the working group be open to all interested stakeholders, but efforts should be made to include experts on risk assessment, hazardous waste exposures, and facility operators. Convening the technical working group should be in addition to public workshops and community meetings, both of which typically are forums to discuss policy issues rather than technical ones.

More generally, CCEEB believes a robust public process is needed to develop the framework, explain its components to the public, and garner stakeholder support.

Rationale for Data, Factors, and Information Needs to Be Transparent

The framework calls for consideration of several new data sets, factors, and information without explaining why each additional element is needed, what data gap it is meant to fill, and how this information relates to the exposures and impacts from a facility over which DTSC has authority. The underlying assumptions for why information is being requested should be made explicit and transparent. This should be a topic of discussion for the technical working group.

As a starting point, DTSC should consider facility information provided as part of the permit application (Parts A & B), as well as information provided through related programs. From there, DTSC and public stakeholders can work to identify data gaps that should be addressed in the framework. Relevant data from other programs includes, for example:

- Process Safety Management plans as required by Cal-OSHA;[2]
- California Accidental Release Prevention requirements under Cal-ARP;[3]
- Spill Contingency and Response Plans required under California Office of Emergency Services;[4]

[2] https://www.dir.ca.gov/dosh/psm-unit.html

[3] https://www.caloes.ca.gov/cal-oes-divisions/fire-rescue/hazardous-materials/california-accidental-release-prevention

- Stormwater requirements under the jurisdiction of the state water board;[5] and
- Air permits and chemical inventory reports required by local air districts, the state air board, and federal EPA.[6]

CCEEB believes that Part B of the permit application could be an appropriate place for DTSC to collect additional information, as needed to evaluate whether there is already sufficient protection of local community health and the environment. For example in Part B, Section F (PROCEDURES TO PREVENT HAZARDS), the applicant can be asked to be more specific on the various plans and programs in place at other agencies. Under Section G (CONTINGENCY PLAN) the applicant can describe the steps in their Spill Prevention Plans that control, mitigate, and inform the community about an event release. In Section P (EXPOSURE INFORMATION) the applicant can include references or information based on data reported to local, state, and federal air agencies, including the results of health risk assessments for air toxics. DTSC should work to incorporate these existing requirements in its permit application in order to provide a more holistic view of operations at a facility and to inform public review. CCEEB acknowledges that it can be difficult for community and public stakeholders to access relevant information retained across so many different agencies — by compiling and providing this information in a transparent and comprehensive format, DTSC can significantly increase public understanding and support public "right to know" efforts. Moreover, this should be the starting point of any consideration of cumulative impacts and community vulnerability.

Cumulative Impacts, Cumulative Pollution Burden, and Vulnerability

The framework must make a clear distinction among the different, although interrelated, domains it seeks to address: (1) cumulative impacts from a permitted facility, (2) cumulative risk or cumulative pollution burden within the community from all sources, and (3) community vulnerability, which is thought to amplify the effects of environmental exposures. Unfortunately, as currently proposed, the framework commingles and, at times, seems to confuse these domains, with the result that is difficult to understand what problem DTSC seeks to solve, how the permitting process would be made consistent for applicants, and what measures or mitigations would be justifiable as an outcome of the process.

One challenge to developing the framework is that there is no clear way to quantify the cumulative risk within a community (let alone the proportional contribution of a single facility or source) and there is no absolute measure of what is or is not "overly burdened." A second challenge lies in the consideration of vulnerability as an effects modifier since the indicators used to express vulnerability (e.g., poverty, education,

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[4] https://www.caloes.ca.gov/for-individuals-families/hazardous-materials/spill-release-reporting

[5] https://www.waterboards.ca.gov/water_issues/programs/stormwater/industrial.html

[6] Air agency programs include reporting of emissions of criteria pollutants (including particulate matter and volatile organic compounds) toxic air contaminants, and in most cases, greenhouse gas. Various rules and permit conditions work to reduce or eliminate these emissions, often times applying "all feasible" control measures" and "best available" technology.

access to health care) are themselves independent drivers of health, often with a much more profound influence on health outcomes and incidence of disease than the environmental exposures originally being evaluated.

Health research has only begun to look at associations among these domains, but none are "smoking bullets."[7] To address these scientific uncertainties, CCEEB believes the framework should be organized so that evaluation of each domain is clear, consistent, and transparent, in a way that prioritizes data based on relevancy and strength of evidence. This is another topic area that would be fitting for discussion at the technical working group.

Multiple Screenings Puts an Invisible Finger on the Scales

The use of multiple screening tools in a sequential manner,such as CalEnviroScreen (CES), EJ Screening Method (EJSM), and California Health Places Index (CHPI) is problematic because all rely on similar or overlapping data sets, but with different analytical algorithms and weighting factors. Use of these tools, whether individually or collective, is not technically supportable as the solebasis for decision making. Our primarily concern is that the use of composite scores and unclear weighting of indicators obscures which factors are driving the perceived problem in a community.A secondary concern is that the availability of multiple tools enables stakeholders who desire a particular outcome to seek out the model that best meets their objectives.

DTSC should decide what environmental factors and health determinants are most important to assess for each domain (i.e., vulnerability, cumulative pollution burden, and facility impacts), and then tailor the use of screening tools to look at relevant data, excluding redundant or duplicative data sets.

For purposes of the framework, CES and CHPI may be useful as they would allow DTSC to easily select and combine different datasets within the tools, and the data for each indicator would be publicly available and transparent. Any weighting or scoring across indicators should be similarly transparent and clearly defined, as should any cut-points that move a permit application from one step to the next, or from one regulatory tier to the next.

Use of EJSM is more challenging. First, it repeats screening for health drivers already characterized in CES and CHPI. Second, how this tool weights different indicators is unclear and not publicly documented, and both weighting and indicator selection are subject to change without public input. Similarly, the supporting data and calculations are not made public, with only high-level maps available for review. Finally, it is unclear what control DTSC would have over the tool and its inputs, and what effect future changes to the tool would have on permit decisions. This makes it difficult for permit applicants to effectively understand and utilize this tool.

[7] For example, the two studies cited in the framework as being suggestive of a causal relationship between proximity to a hazardous waste facility and health outcomes do not generally support this conclusion.

"The Chicken and The Egg" in Land Use

The framework assumes that the original siting of a TSDF influenced the subsequent siting of other and additional industrial land uses in close proximity, all of which collectively burden nearby receptors.[8] This narrative seems to oversimplify land use decisions and arguably overstates the role of an individual TSDF. Indeed, the clustering of industrial land uses in certain zones is the result of local government planning rather than the magnetic pull of a single facility drawing the others to it. Likewise, local land use decisions cause the co-location of sources and receptors, often with new receptors following the siting of existing sources, although this problem is not mentioned in the framework.

As currently proposed, and for the reasons discussed in previous sections, CCEEB is concerned that the framework asks a DTSC permit applicant to bear responsibility—without any bounds—for land uses and impacts outside of its facility, as well as vulnerability largely related to the socioeconomic status of a community.

There Must Be a Nexus between a Facility's Impacts and Required Mitigations

The framework proposes establishing a clearinghouse of pre-approved community mitigation projects meant "to reduce the cumulative environmental and health impacts on the community or to enhance community resiliency…" Tier 1 and Tier 2 facilities would then be required to implement one or more of these projects as part of the permit conditions. DTSC provides as examples such potential mitigation measures as a reduction in truck traffic in the area, lead abatement in homes, the rather generic and vague term "community investments," healthy home assessments, and asthma intervention programs. The process by which the clearinghouse would be developed is not specified other than to say it would be a public process, presumably allowing communities to propose projects without regard to facility-specific information, and perhaps without the benefit of a community needs assessment. DTSC would then finalize the list of approved projects and weight each one – we note here, however, that the criteria being used to make these decision and the purpose of these projects is unclear. The framework fails to explain how DTSC would then determine permit requirements, or how community and public input would be considered in directing which mitigations would be needed.

This ambiguous process lacks any process to assess a facility's impacts against accepted thresholds to determine the level or type of mitigations needed. Rather, it assumes a general need in the community, then directs the facility to address this need. As such, it creates a "pay-to-play" system that allows the imposition of mitigation measures without any apparent nexus to public impacts. The outcome of such a system is of concern – at its worse, a project could "pay" to pollute in a

[8] A deliberative draft of the framework stated, "Scientific studies have demonstrated…the effect of siting of certain types of facilities, notably hazardous waste facilities, on surrounding land use and associated vulnerabilities in communities." While this language has since been removed, the concept is still embedded in the proposed framework. DTSC appears to be trying to solve legacy land use decisions outside the facility's control through its permit program.

community already overly burdened. At best, it sets up a situation where a politically positioned community could extract mitigations not proportional to a facility's impacts.

The "collaborative review pathway" goes one step further, in that it short cuts assessment of the facility's impacts and goes straight to community negotiations. Under this option, a facility would negotiate to reach a "good neighbor agreement" with "representatives of community groups" chosen by DTSC. Who could qualify as a representative authorized to negotiate on behalf of the community is unclear, nor is the role of local government, and DTSC does not explain how it would choose these representatives. While this would surely ease administrative burden and negate the need for the framework's more complicated procedures, it also does away with necessary scientific review.

CCEEB urges DTSC to develop a process by which it can demonstrate a nexus between a facility's impacts and the mitigations and monitoring being required. Such a process should determine the type and level of mitigation being required, and seek to standardize requirements so as to provide consistency and transparency in permit decisions.

Thank you for the opportunity to comment and for your consideration of our concerns and recommended revisions. CCEEB looks forward to working with DTSC to ensure California maintains capacity to manage its hazardous waste in state and that any framework put forth is workable, consistently applied, mindful of DTSC jurisdiction and other regulatory requirements, and protective of human health. Should you have questions, please contact CCEEB's Water, Chemistry and Waste (WCW) Project Manager Dawn Koepke with McHugh Koepke & Associates at (916) 930-1993.

Sincerely,

Bill Quinn
CCEEB President

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